

BENCH AT AURANGABAD.

1. Leave to amend the prayer clause.
2. The petitioner assails the order of termination, so also seeks appointment from open competition category.
3. The petitioner had applied for the post

of Junior Engineer (Establishment), pursuant to the advertisement dated 27.8.2014 from open competition category. There were six posts meant from open competition category. Out of six posts, one was reserved for Ex-serviceman, two posts were reserved for women and one for part time.

4. Mr.Patil, learned counsel submits that the Respondents have considered petitioner from ESBC and issued temporary appointment order from ESBC category. Nobody had applied for the post of Junior Engineer (Establishment) from Ex-serviceman category. The petitioner as per merit ought to be considered from open competition category.

5. Mr.Ingole, learned counsel for the Respondents submits that as per Circular dated 16.4.1981 the vacancy for Ex-serviceman could be carried forward for one year. So also as per GR dated 21.2.2015, post of ESBC would be filled in and the petitioner would be considered from ESBC. The Respondents also received information that

candidates from Ex-serviceman are available. In view of that nobody was appointed from the post which was reserved for Ex-serviceman.

6. The reservation for Ex-serviceman is horizontal reservation. Clause 1 of the advertisement states that if the candidate of horizontal reservation is not available then the said post would be filled in from the category in which the horizontal reservation was kept on merits. The petitioner had applied from open general category. It is not disputed that none had applied for the post from Ex-serviceman category. As per clause 1 of the advertisement, the said post ought to be filled in from open general category on merits. The advertisement would bind all the parties.

7. Even if the case of Respondents is accepted that the vacancy for Ex-serviceman could be kept for one year, still, the Respondents have not issued any advertisement for all these years for filling in the post of Ex-serviceman. We had specifically asked Mr.Ingole, learned counsel for

the Respondents as to whether any post for Ex-serviceman was advertised subsequently. On instructions Mr.Ingole, learned counsel states that the said post is never advertised after the advertisement dated 7.8.2014.

8. Strictly going as per the advertisement, the candidate not being available from Ex-serviceman category, the said post would be filled in from open competition category. It is not disputed that if the post of Ex-serviceman not becoming available and is required to be filled in from open competition category, the petitioner would walk in for the said post. It is submitted that the petitioner is considered as open candidate but for ESBC post.

9. If there is no other impediment, the Respondents shall consider the appointment of petitioner from open competition category for the post of Junior Engineer (Establishment). The same be done within four (4) weeks. Consequential benefits would follow.

10. The Writ Petition is disposed of. No costs.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

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